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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,371	04/25/2001	Diane C. Breidenbach		6561

7590 11/06/2008  
Thomas A. O'Rourke  
BODNER & O'ROURKE  
425 Broadhollow Road  
Melville, NY 11747

EXAMINER
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NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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11/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/842,371	<b>Applicant(s)</b> BREIDENBACH ET AL.	
	<b>Examiner</b> Tuan N. Nguyen	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 29 December 2006.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-27, 29, 40-49 and 51 is/are pending in the application.  
4a) Of the above claim(s) 32-39 and 51 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-27, 29 and 40-49 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 4/24/08 have been fully considered but they are not persuasive. The applicant's argument of the check valve of Bratby-Carey has no bearing on the claimed structure or on the rejection since the check valve of Bratby-Carey is a part of the pad 24, as shown in Fig. 3 of Bratby-Carey, which is being substitute with the rollerball applicator of Magharehi as stated in the previous office action. The applicant further contends that Magharehi and Pieper do not suggest a dual ended cosmetic applicator; this again is not persuasive since the dual ended cosmetic applicator is taught by the primary reference Bratby-Carey. The Magharehi is utilized for the teaching of a rollerball applicator and the Pieper is utilized for its teaching of a doe foot applicator, which is contrary to the applicant's assertion of a dual ended applicator.

### ***Specification***

2. The disclosure is objected to because of the following informalities: The continuation data in the first paragraph of page 1 needs to be filled out accordingly. Appropriate correction is required.

### ***Claim Objections***

3. Claims 1-27, 29, 40 and 41 are objected to because of the following informalities: "receptacle" on line 5 should be --receptacles--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3751

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-27, 29, 40 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to which receptacle is being claimed on lines 8, 9 and 13-16 of claim 1. Moreover, it is unclear as to the difference between "a receptacle" on line 13 of claim 1 and the receptacle there above. Finally, "said sleeve said receptacle" on line 14 of claim 1 and "wherein said, and wherein said" on line 16 of claim 1 are grammatically incorrect which raises a question of indefiniteness as to what is being claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-27, 29 and 40-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,897,262 (hereinafter Bratby-Carey) in view of US Patent 5,937,866 (hereinafter Magharehi) and US Patent 6,276,856 (hereinafter Pieper) as set forth in the previous office action.

The Bratby-Carey receptacles, each being a single unitary member having a sidewall and a neck having an opening on a top surface as claimed. The amended language offer nothing more than what already taught by the Bratby-Carey reference.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Tuan N Nguyen/  
Primary Examiner, Art Unit 3751

TN